

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAYMOND SCHUURMAN

Appeal No. 2002-0021
Application No. 09/417,439

ON BRIEF

Before ABRAMS, FRANKFORT and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 7, all of the claims pending in this application.

Appellant's invention relates to an electromagnetically controlled seat valve (claim 1) and to an automatic transmission for a motor vehicle including such a valve (claim 7). As noted in the paragraph bridging pages 5 and 6 of the specification

"[a] particular advantage obtained by using the seat valve of the present invention as described so far is that the ratio

between the flow-through pressurized medium volume at high and low temperatures is significantly improved as compared with the state of the art, as a result of the special construction of the throttling device or means as proposed by the present invention. To this end, the single orifice of a larger size that had been customarily used up to now has been replaced in accordance with the present invention with a plurality of smaller-size throttling orifices that are spaced from each other but are arranged parallel to one another as far as the flow of the pressurized medium through them is concerned. Individual throttling orifices with smaller sizes have a higher throttling effect on the medium flowing through them, and hence permit less of the medium to flow through them, at relatively low temperatures than the aforementioned larger-size single throttling orifice. On the other hand, the flow-through volume needed for reliable operation at higher temperatures can be assured by appropriately choosing the number of the individual throttling orifices.”

Independent claims 1 and 7 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellant’s brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:¹

Brehm et al. (Brehm)
(German Priority Document)

44 31 457 C2

Feb. 20, 1997

¹ Our understanding of the two German language documents applied by the examiner is based on translations prepared for the USPTO. For appellant’s convenience, a copy of each of the translations is attached to this decision.

Bosch GmbH

93 21 431 U1

Mar. 5, 1998

Claims 1 through 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brehm in view of Bosch GmbH. According to the examiner, Brehm shows the claimed valve except for not having two parallel throttling bores, while Bosch GmbH shows a similar valve with two parallel bores. The examiner concludes that it would have been obvious to one of ordinary skill in the art to have used two parallel throttling bores as taught in Bosch GmbH in the valve of Brehm “to similarly provide for a desired throttling flow rate” (final rejection, page 2).

Rather than reiterate the examiner's full statement of the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellant regarding the rejection, we make reference to the final rejection (Paper No. 8, mailed November 1, 2000) and the examiner's answer (Paper No. 13, mailed May 21, 2001) for the examiner's reasoning in support of the rejection, and to appellant's brief (Paper No. 12, filed April 16, 2001) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's above-noted rejection under 35 U.S.C. § 103 will not be sustained. Our reasons follow.

Like appellant, we are of the opinion that there is no reasonable teaching, suggestion or incentive in the applied prior art references, or otherwise specified by the examiner, which would have led one of ordinary skill in the art at the time of appellant's invention to modify the seat valve of Brehm in the particular manner urged by the examiner. Brehm discloses an electromagnetically operated pressure valve similar to the valve addressed by appellant. Indeed, appellant has noted on pages 2 and 3 of his specification that Brehm is representative of the prior art over which the present invention is an improvement. While Brehm appears to generally recognize a type of temperature related flow problem similar to that discussed by appellant, that reference provides a solution as shown in Figures 1 and 2 thereof, wherein a single throttling hole (57) is provided in Figure 1 or wherein the throttling hole (57) of Figure 1 is replaced with a throttling bore (57a) seen in Figure 2 having sections (57b) and (57c) of different cross-sectional shapes and lengths.

By contrast, Bosch GmbH discloses an electromagnetically controlled pressure valve of a different type and which includes throttling of the fluid medium from the pressure source via holes (34) and control edge (45) of piston section (40) of control piston (39). There is no discussion in Bosch GmbH concerning the particular temperature related flow problem addressed by appellant, nor any discussion of how the holes (34) serve to throttle pressure medium from the pressure source. The emphasis in Bosch GmbH (see translation, pages 7-9) is on the throttling provided by the narrowing ring space adjacent the first control edge (45) as the control piston (39) moves to the right in Figure 1 due to increasing pressure in the ring space (46) acting on piston section (41).

Like appellant, we consider that the modification of the valve of Brehm urged by the examiner is merely a hindsight reconstruction based on the impermissible use of appellant's own disclosure and teachings as a blueprint for piecing together unrelated elements of the relied upon prior art references. The examiner's assertions (answer, page 7) that it is "readily apparent to one of ordinary skill in the art that using two bores in 4,431,457 [Brehm] as suggested by 9,231,431 [Bosch GmbH] would provide a greater flow while maintaining the same pressure drop that the throttle 57 of 4,431,457 provides" is entirely speculative and without foundation in the applied prior art.

Appeal No. 2002-0021
Application No. 09/417,439

Absent the disclosure of the present application, it is our opinion that one of ordinary skill in the art would not have been motivated to modify the valve of Brehm in the particular manner urged by the examiner so as to arrive at the subject matter set forth in appellant's claims 1 through 7 on appeal. Thus, we will not sustain the examiner's rejection of claims 1 through 7 as being unpatentable over Brehm in view of Bosch GmbH.

In accordance with the foregoing, the decision of the examiner rejecting claims 1 through 7 of the present application under 35 U.S.C. § 103(a) is reversed.

REVERSED

Appeal No. 2002-0021
Application No. 09/417,439

NEAL E. ABRAMS)	
Administrative Patent Judge)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

CEF:yr

Michael J. Striker
STRIKER STRIKER & STENBY
103 East Neck Road
Huntington, N.Y. 11743